उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

M.A.(C.) NO. 220 OF 2007

APPELLANT
NON-CLAIMANT

Om Prakash Agrawal, son of Kishan Lal Agrawal, r/o P.O. Neora, (Gandhi Chowk), District- Raipur (C.G.)

Versus

RESPONDENTS
APPLICANTS

1. Krishna Kumar Soni, s/o Jivdhan Prasad Soni, aged about 44 years
2. Droupati Bai Soni, w/o Krishna Kumar Soni, aged about 43 years
3. Ku. Damyanti Soni, Krishna Kumar Soni, aged about 18 years
4. Ku. Kavita Soni, d/o Krishna Kumar Soni, aged about 16 years
5. Ku. Kchama Soni, d/o Krishna Kumar Soni, aged about 14 years

Appellant No. 4 to 5 being minor on behalf of through their legal guardian father the appellant No. 1 Shri Krishna Kumar Soni
All R/o Alda, P.O. Tulsi, Distt-Raipur (C.G.)

NON-APPLICANTS
NON-CLAIMANTS

6. Mant Ram @ Ballu, s/o Dhaniram, r/o P.O. –Mohra, Police Station-Sohela, District Raipur (C.G.)
(Driver of Truck Vehicle bearing registration No. C.G. 05/ZC 0318)
7. The New India Insurance Company Ltd. through – Divisional Manager, Division No. 1, the New India Insurance Company Ltd., Jail Road, Raipur, Tehsil and District – Raipur (C.G.)
(Insurer of Truck Vehicle bearing registration No. C.G. 05/ZC 0318)

SB: HON'BLE SHRI DHIRENDRA MISHRA, J.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

2.7.2007

Shri Shivendu Pandya, counsel for the appellant.

None appears for the respondents.

Heard on admission.

Appellant Om Prakash Agrawal, who is owner of Truck No. CG05-ZC 0318 has preferred this misc. appeal against the award dated 27-7-2006 passed in Claim Case No. 87/2005 by learned 14th Additional Motor Accident Claims Tribunal, FTC, Raipur whereby a sum of Rs. 1,93,700/- has been awarded with interest at the rate of 9% per annum from the date of application. Primary liability of satisfying the award has been fastened on the Insurance Company, however liberty has been granted to recover the same from the owner by filing execution proceeding.

Learned counsel for the appellant submits that the Tribunal has wrongly held that the driver did not have valid driving licence as the licence produced by the Insurance Company purportedly belonging to the Driver Mantram has not been conclusively proved that it is belonged to Mantram of Sohela. Thus the insurer has not been able to discharge its onus that the driver who was driving the vehicle at the relevant time was in fact possessing fake driving licence.

I have heard learned counsel for the appellant. I have perused the record of the Tribunal including the impugned award.

Learned Tribunal in para 25 of the impugned award has considered the objection of the owner. From the evidence available on record, it is found that after examining the evidence of Rajesh

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Bhargava, Licence Clerk of R.T.O. Raipur the insurer has tried to prove that document of Ex. D-2 was never issued by R.T.O., Raipur. Even other wise, no licence has been filed along with the charge sheet against the driver of the vehicle, produced by the claimants themselves. The negative burden of proving the fact that the driver did not have valid licence has been discharged by the Insurance Company as the owner has not adduced any evidence to substantiate that the driver had valid driving licence. The owner has not taken the defence in the reply that the driver had valid driving licence and he had entrusted the vehicle after satisfying that the driver had valid driving licence. Apart from this, the owner has not even entered into witness box to show that the vehicle was entrusted by him to the persons who had valid licence. The witnesses have not been cross – examined by the owner. In these circumstances, the reasoning assigned by the Tribunal for exonerating the insurance company from the liability of satisfying the compensation cannot be faulted particularly in the light of the fact that primary liability has been fastened upon the insurance company with liberty to recover the same from the owner.

The appeal being without substance is dismissed at admission stage.

Consequently M.C.P. No. 316/2007 and I.A. No. 483/2007 also stands disposed of.

Sd/-
Dhirendra Mishra
Judge